

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA**

DUWAYNE ALLEN BOHNER,)
Plaintiff,)
v.) CASE NO: 10 CV 4621 DWF/L
LHR, INC. and BANK OF AMERICA)
Defendants.)

DEFENDANT BANK OF AMERICA'S MOTION TO DISMISS

Defendant Bank of America, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, hereby respectfully requests that the Court dismiss Count 1 of the Complaint filed by Plaintiff DuWayne Allen Bohner (“Bohner”) for failure to state a claim. In support of its motion, Bank of America states as follows:

1. On November 16, 2010, Bohner filed a two-count complaint against the defendants in the above-captioned matter. (Dkt. 1.)
2. Count 1 of the Complaint alleges numerous violations by Bank of America of the Fair Debt Collection Practices Act (“FDCPA”), 15 U.S.C. 1962.
3. To be held liable for the FDCPA violations alleged in Count 1, Bank of America must be a third-party bill collection agency.
4. Bank of America, however, is not a third-party bill collection agency trying to collect a debt. Instead, as Plaintiff himself alleges in the Complaint, Bank of America is the creditor, meaning it is not subject to liability under the FDCPA for the actions alleged in the Complaint. (Dkt. 1 at ¶ 5.)
5. As a result, Count 1 of the Complaint should be dismissed.

WHEREFORE, Bank of America respectfully requests that the Court dismiss the claims asserted against it in the Complaint with prejudice.

Dated: May 3, 2011

FISH & RICHARDSON P.C.

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